

INTERNATIONAL ARBITRATION

June 2022

IN THIS ISSUE

This update reports on new energy regulatory changes in Mexico, on the outcome of the vote in the Mexican Congress on the highly controversial presidential proposal for constitutional reform in energy matters, and on a new topic on minerals that is causing controversy.

Fact Summary:

Legal Actions Taken by Mexico on the Energy Sector Since 2018 *UPDATE: March-April 2022*

ABOUT THE AUTHOR



Cecilia Flores Rueda, FCI Arb handles complex and high-stake international and domestic arbitration cases and represents clients before federal and local courts. Acts in arbitration as both a party representative and an arbitrator and focuses her practice on issues related to cases involving governmental entities (administrative law), shareholders' disputes, energy, oil and gas, clean energies, infrastructure projects, trusts, construction, joint ventures, lease agreements, transportation and logistics, international sale of goods, distribution, insurance and reinsurance, e-commerce, intellectual property, and commercial transactions in general. She also represents cross border clients before state and federal courts on a broad spectrum of civil, commercial, and administrative matters.

Cecilia's experience both in arbitration and litigation matters enables her to appear before courts in proceedings requesting and enforcing interim measures as well as proceedings seeking the recognition and enforcement of arbitral awards. Her value to clients lies in her ability to frequently draw upon experience in order to formulate creative solutions to complex issues. She advises clients on ethics and compliance matters as well. She can be reached at cecilia@floresrueda.com.

ABOUT THE COMMITTEE

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We previously prepared a Fact Summary regarding the legal actions taken by Mexico on the Energy Sector since 2018.¹ You may take a look at it [here](#). This note updates on different developments regarding the energy industry during March and April 2022:

- On March 30, 2022, the *Comisión Reguladora de Energía* (“CRE”) published in the *Diario Oficial de la Federación* (“DOF”) a new regulation regarding the format for submitting applications for electricity generation permits.² With respect to the previous regulation and the rest of the regulatory framework, some argue that the new regulation increases the number of documents required.³
- On April 7, 2022, the Mexican Supreme Court of Justice dismissed the action of unconstitutionality filed by several senators against the reform to the

Ley de la Industria Eléctrica (“LIE”) previously promoted by Mexico’s president, Andrés Manuel López Obrador (“AMLO”).⁴ Consequently, the text of the LIE will be maintained in the terms in which it was approved in March 2021.

In this regard, approximately 250 appeals (*amparo* suits) filed individually by companies claiming to be affected by the LIE are still pending resolution.

- On April 17, the Chamber of Deputies voted on AMLO’s heavily criticized proposed constitutional energy reform bill. The results of the vote were 275 votes in favor, 223 against and no abstentions. With these results, the project did not achieve the two-thirds vote of the individuals present that it needed. Therefore, the project was discarded.⁵

¹ This should be considered as a non-exhaustive summary update of some of the legal actions implemented or being implemented by Mexico during March and April 2022. It should also not be considered as an opinion of FloresRueda Abogados or any of its lawyers with respect to the actions described. For specific advice, please contact the FloresRueda Abogados team directly.

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² Diario Oficial de la Federación, ACUERDO Núm. A/006/2022 de la Comisión Reguladora de Energía por el que se expiden las Disposiciones Administrativas de Carácter General que establecen los términos para presentar la información relativa al objeto social, capacidad legal, técnica y financiera, así como la descripción del proyecto, y el formato de la solicitud de permisos de generación de energía

eléctrica, see:

http://www.dof.gob.mx/nota_detalle.php?codigo=5647325&fecha=30/03/2022

³ Mario Alavez, Modifica CRE requisitos para permisos de generación eléctrica, *Energía a Debate*, see:

<https://energiaadebate.com/modifica-cre-requisitos-para-permisos-de-generacion-electrica/>

⁴ Guadalupe Vallejo, SCJN valida sesión que reconoce constitucionalidad de Ley de Industria Eléctrica. Expansión:

<https://politica.expansion.mx/mexico/2022/04/19/scjn-valida-sesion-que-reconoce-constitucionalidad-de-ley-de-industria-electrica>

⁵ Marco Ugarte, Congreso mexicano rechaza reforma constitucional de energía, *Los Angeles Times*, see: <https://www.latimes.com/espanol/mexico/articulo/>

- On April 18, the Chamber of Deputies approved an initiative, proposed by AMLO, to reform the regulation of lithium in the Mining Law.⁶ This vote only required an absolute majority.

The lithium reform establishes, *inter alia*, that: (i) for its exploration, exploitation and use, no concessions, licenses, contracts, permits, assignments or authorizations will be granted in the matter; (ii) a decentralized public agency will be created for its use; and (iii) legal and regulatory provisions that oppose the reform are repealed.

This is interesting because, according to the newspaper *La Jornada*, there are currently 31 lithium exploration projects in Mexico involving 159 thousand hectares and English, Canadian and Australian companies.⁷

[2022-04-17/congreso-mexicano-debate-cambios-constitucionales-en-energia](https://elpais.com/mexico/2022-04-18/lopez-obrador-contrata-con-una-iniciativa-para-nacionalizar-el-litio-tras-el-rechazo-a-su-reforma-electrica.html)

⁶ Jon Martín Cullell, La Cámara de Diputados aprueba la iniciativa para nacionalizar el litio tras el rechazo a la reforma eléctrica, *El País*, see: [https://elpais.com/mexico/2022-04-18/lopez-obrador-contrata-con-una-iniciativa-para-](https://elpais.com/mexico/2022-04-18/lopez-obrador-contrata-con-una-iniciativa-para-nacionalizar-el-litio-tras-el-rechazo-a-su-reforma-electrica.html)

[nacionalizar-el-litio-tras-el-rechazo-a-su-reforma-electrica.html](https://www.jornada.com.mx/notas/2022/04/19/politica/dio-el-sexenio-pasado-permisos-para-explotar-litio-en-159-mil-hectareas/)

⁷ Georgina Saldierna y Enrique Méndez, Dio el sexenio pasado permisos para explotar litio en 159 mil hectáreas, *La Jornada*, see: <https://www.jornada.com.mx/notas/2022/04/19/politica/dio-el-sexenio-pasado-permisos-para-explotar-litio-en-159-mil-hectareas/>

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